UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

MADISON SQUARE GARDEN, CT, LLC Employer [1] and COUNCIL 4, AFSCME, AFL-CIO Petitioner	Case No. 34-RC-1812

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[2] the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.[3]

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of

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[1] The Employer's name appears as amended at the hearing.

[2] The Employer and the Petitioner have stipulated to adopt as part of the record in the instant matter the record in *Madison Square Garden*, Case No. 34-RC-1565.

[3] During the hearing, the undersigned denied the Employer's special appeals from the hearing officer's denial of it's request to sequester witnesses and to the hearing officer's ruling that the Employer "may not delve into the credibility of witnesses." The Employer renewed its objections to both rulings in its post-hearing brief. For the reasons set forth in my Orders denying both special appeals (copies of which are hereby admitted into the record as Board Exhibits 2 and 3), I find no merit to the Employer's objections. Moreover, I note that in its post-hearing brief, the Employer admitted that the parties had "ample opportunity during the two proceedings that have addressed the same issues, to present evidence, testimony and 'significant facts' in support of their respective positions," and that "the Hearing Officer, in order to complete the record, asked an abundance of questions of both the Employer's and Union's witnesses . . . ."

certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer is a Delaware corporation engaged in the entertainment business. Solely involved in this proceeding are the Employer's operations at the Hartford Civic Center which it manages and where it presents exhibitions, concerts and sporting events. The Petitioner, which currently represents the Employer's facility workers at the Civic Center, seeks to represent approximately 76 event staff employees. In 1998, the Petitioner sought to represent the same employees of the same Employer at the same facility in Case No. 34-RC-1565. In its Order Denying Review, reported at 325 NLRB 971 (1998), the Board upheld the undersigned's Decision and Direction of Election in which I found, contrary to the Employer's contention, that none of the event staff employees in issue therein were guards within the meaning of the Act.

In the instant case, the Employer again contends, contrary to the Petitioner, that all of the event staff employees are guards within the meaning of the Act, and that the Petitioner is prohibited by the Act from representing them because the Petitioner admittedly represents and admits to membership non-guards. Based upon the foregoing, the Employer in its post-hearing brief moved to dismiss the petition. Inasmuch as the Employer relies entirely upon the record in Case No. 34-RC-1565 for its contention that the event staff employees are guards under the Act, and has proffered no additional evidence regarding their alleged guard status, there is no basis to disturb the Board's previous ruling that the event staff employees are not guards under the Act. Accordingly, its motion to dismiss the petition is denied.

However, the Employer further contends that certain other individuals whose guard status was not determined in Case No. 34-RC-1565 should be excluded from the petitioned-for unit as supervisors within the meaning of the Act. In this regard, in Case No. 34-RC-1565, the parties stipulated that the following seven individuals were statutory supervisors: Donna Konvent, Dianne Dowdell, Juan Ortiz, Ron Brown, Skip Ward, Juliet Little and Robin Tofil. As a result, there was no consideration or determination of the guard status of these seven individuals. In the instant matter, as noted above, the Employer contends that six of these seven individuals (one, Donna Konvent, apparently is no longer

employed by the Employer), along with seven other individuals presently occupying the same or similar positions (Mickey Colon, Rosa Dinoto, Bob Glass, Jim Martinelli, Sharon Shea, Elaine Thibault, and Alan Victor), are supervisors under the Act. The Employer has advanced no position on the guard status of the thirteen disputed supervisors. The Petitioner agrees that Juan Ortiz and Skip Ward should be excluded from the petitioned-for unit as supervisors under the Act, but contends that the remaining eleven individuals are neither supervisors nor guards under the Act.

In the Decision and Direction of Election in Case No. 34-RC-1565, it was specifically noted that event staff employees did not have the authority to detain or arrest anyone at the facility, or to eject anyone from the facility. Rather, any such problems involving patrons which were encountered by event staff employees were referred to the Employer's supervisors or to the police. The record in the instant matter reflects the same limitations on the authority of event staff employees. However, as described in more detail below, the record further reflects that the eleven individuals in dispute, all of whom have the title "supervisor" (hereinafter referred to as supervisor), are responsible, in conjunction with the police, for the detention, ejection or arrest of patrons.

As noted in the prior Decision and Direction of Election, event staff employees known as "inspectors" are "stationed at the main entrance where they 'pat down' or use an electric wand to check patrons for contraband, i.e., bottles and cans." The record in the instant case reveals that inspectors also perform a visual inspection of all patrons to see if they are bringing anything else in that is inappropriate or against house policy, such as a camera. In the event that an inspector discovers inappropriate items in the possession of an incoming patron, the inspector takes no further action, and instead turns the matter over to one of the disputed supervisors who oversee the ticket taking operation at the three entrances to the facility. The supervisor is then responsible for dealing with the patron, with the authority to deny the patron's entrance to the facility.

As further noted in the prior Decision and Direction of Election, event staff employees known as "ushers" are stationed in the arena "at the top and bottom of the Civic Center aisles where they ensure that patrons with tickets are in the proper location." The record in the instant case reveals that if an usher confronts

a situation where two or more patrons claim the same seats, the matter is turned over to the assigned supervisor for that section, who is responsible for resolving the conflict with the patrons. More significantly, in the event of any altercation or incident between or among patrons, the assigned supervisor is responsible for dealing with the situation, and with the assistance of the police may eject patrons.

The record contains conflicting evidence regarding the amount of time spent by supervisors in performing the duties described above. In this regard, there is testimony that supervisors spend approximately 85% to 100% of their time performing such duties, whereas there is other testimony that certain supervisors spend approximately 85% of their time performing the same duties as the event staff employees assigned to their areas. There is no dispute, however, that all eleven supervisors have the authority to exercise, and have exercised in the course of their employment, all of the supervisor duties described above.

All supervisors regularly patrol within their assigned area and carry "open mike" two-way radios,[4] whereas only a few event staff employees in certain critical locations may carry such a radio. The radios are used by the supervisors, inter alia, to summon medical personnel in the event of an injury or illness to a patron or employee, to communicate with their superiors, and to respond to calls for assistance from other supervisors or to request assistance from other supervisors.

The supervisors' uniform consists of black pants, white shirt, purple tie and purple sports jacket. Event staff employees wear a purple sweater in place of the sports jacket. The supervisors wear a gold name tag which identifies them as "supervisor," whereas event staff employees wear a silver name tag. Supervisors are paid approximately $3.00 per hour more than event staff employees; they may purchase discounted sky box tickets; and they have permanently assigned lockers, whereas event staff employees may only utilize a locker if one is available.

[4] "Open mike" radios allow anyone with such a radio to hear all conversations on that frequency.

Based upon the foregoing and the record as a whole, I find that the eleven disputed supervisors are guards within the meaning of Section 9(b)(3) of the Act. At the outset, I note that the supervisors wear a distinctive uniform and identification tag which distinguishes them from all other event staff employees; they carry a two-way radio at all times which keeps them in constant communication with each other as well as their superiors; and they are paid a significantly higher rate of pay than event staff employees. More significantly, I note that the supervisors constitute an essential part of the Employer's security procedures for protecting its facility, its patrons and its staff. In carrying out the Employer's security procedures, the supervisors regularly perform security functions which requires them to enforce rules against patrons and staff in order to protect the Employer's facility, as well as to protect other patrons and staff while at the facility. *Allen Services Co*., 314 NLRB 1060, 1062 (1994); *Rhode Island Hospital*, 313 NLRB 343, 346 (1993); *A.W. Schlesinger Geriatric Center*, 267 NLRB 1363 (1983); *Holiday Hotel*, 134 NLRB 113, 121 (1961). Although such security functions may in some instances represent a small portion of their overall job duties, it is well established that it is the nature of the duties performed by guards and not the percentage of time performing such duties which is controlling. *Rhode Island Hospital*, supra, citing *Walterboro Manu. Co*., 106 NLRB 1383 (1953); *Wells Fargo Alarm Services*, 289 NLRB 562 (1988*)*. Accordingly, I shall exclude the eleven disputed supervisors from the petitioned-for unit.[5]

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

[5] In light of my finding above that the eleven disputed supervisors are guards, it is unnecessary to determine whether they are also supervisors within the meaning of the Act.

All full-time and regular part-time event staff employees employed by the Employer at the Hartford Civic Center; but excluding facility staff, stagehands, office clerical employees, and guards, professional employees, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit described above at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. These eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by Council 4, AFSCME, AFL-CIO.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7)

days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before May 9, 2000. No extension of time to file the list shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 16, 2000.

Dated at Hartford, Connecticut this 2nd day of May, 2000.

/s/ Peter B. Hoffman
Peter B. Hoffman, Regional Director
National Labor Relations Board
Region 34

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